No. 86-421

In The

Supreme Court of the United States

October Term, 1986

Board of Directors of Rotary International, et al.,
Appellants,

v.

Rotary Club of Duarte, et al.,
Appellees.

Appeal from the Court of Appeal of the State of California, Second Appellate District

Brief Amici Curiae of the California Women Lawyers; National Organization for Women; NOW Legal Defense and Education Fund; San Francisco Women Lawyers Alliance; Women Lawyers' Association of Los Angeles; American Jewish Committee; American Women In Radio and Television, Inc.; Center for Constitutional Rights; Coalition of Labor Union Women; Connecticut Women's Educational & Legal Fund; Equal Rights Advocates; Northwest Women's Law Center; Women's Action Alliance, Inc.; Women's Bar Association of the State of New York; Women's Equity Action League; Women's Law Project; Women's Legal Defense Fund; Women Employed; and Women In Business In Support Of Appellees.

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STATUTES AND REGULATIONS

I.

STATEMENT OF INTEREST OF AMICI CURIAE

Amici are national and state organizations, open to women and men, committed to achieving equal opportunity for women and minorities in the business, professional and civic life of our country. Amici's individual statements of interest appear in Appendix A. Amici's members are personally aware of the high level of business activity at many of the country's purportedly "private" clubs and organizations, such as Rotary International, and of the lost business opportunities when women and minorities are barred from membership at these business oriented clubs. Because of the direct impact on women's and minorities' full access to clubs and organizations which are centers of business and decision making activity, amici have closely followed the progress of the case at bar and are deeply concerned with its outcome.

II

STATEMENT OF THE CASE

Amici adopt the Statement of the Case set forth by Appellee, Rotary Club of Duarte.

III.

SUMMARY OF ARGUMENT

Rotary International is a large, world-wide organization of business and professional leaders which confers significant business advantages on its members. Application of the Unruh Civil Rights Act to Rotary International narrowly serves the profoundly important state interest of ensuring nondiscriminatory access to commercial opportunities, including membership in business-related clubs and organizations. Discriminatory membership policies at such organizations have a crippling effect on the professional opportunities and advancement of women and minorities.

Application of the Unruh Act to business-related clubs and organizations like Rotary International does not infringe their members' First Amendment rights of either intimate or expressive association. Rotary's size, obsession with growth and publicity, inclusion of non-members in its activities, business purpose and its business-oriented selection system deprive it of any constitutional right of intimate association.

Nor does Rotary engage in the types of expressive activities protected by the First Amendment. If there is any intrusion on Rotary International's or its members' freedom of expressive association, it is outweighed by California's compelling interest in removing barriers to the economic advancement and political and social integration of all of its citizens.

IV.

ARGUMENT

A. Introduction*

In recent years, wide attention has been given to the impact on women and minorities of exclusion from clubs and organizations that hold themselves out as private, but are in fact centers of business activity.[1] Such exclusion deprives women and minorities of equal economic opportunity, subjects them to personal humiliation and confirms a belief that women and minorities are inappropriate participants in the exercise of power by barring them from informal centers of power. The numerous resolutions, executive orders and personnel policies recently promulgated which prohibit the conduct of official business at discriminatory clubs and organizations implicitly recognizes that such exclusion is harmful and that there is

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*Although, in many cases, the focus of this brief is the impact of exclusion from business oriented facilities on women because this case dealt with the specific exclusion of women, *amici* are equally committed to ensuring that all members of minority groups enjoy full access to those important business centers.

1 *See, e.g.*, Avner and Bacharach, *Let's Make a Deal—When Private Means Business*, N.Y. St. Bar J., Oct. 1985, at 12; Burns, *The Exclusion of Women from Influential Men's Clubs: The Inner Sanctum and the Myth of Full Equality*, 18 Harv. C.R.-C.L. L.Rev. 321 (1983) ("Burns"); Schafran, *Welcome To The Club! (No Women Need Apply)*, Women and Foundations/Corporate Philanthropy (1981); *The All-Male Club: Threatened On All Sides*, Bus. Wk., August 11, 1980, at 90; Bracewell, *Sanctuaries of Power*, Hous. City Mag., May 1980, at 50; Ginsburg, *Women as Full Members of the Club: An Evolving American Ideal*, 6 Hum. Rts. 1 (1975).

extensive business activity at so-called "private" clubs and organizations.[2] See Part IV B.2 *infra*.

The Duarte Rotary Club seeks to acknowledge the reality of its club's purposes and practices by admitting women who meet Rotary's membership criteria as business and professional leaders in the community. Rotary International, however, resists this change, pretending that it is solely an organization of intimates providing service to the public, has no business purpose, provides no business-related goods or services, and confers no commercial advantage on its members. Rotary's Manual of Procedure and the testimony offered in this and another Rotary case tell a different story—the story of an immense international organization avid for publicity and growth, whose members are chosen for their standing in the business community and are provided with the training and with the access to business leaders worldwide to enhance that standing.

Despite Rotary's protestations, the business advantage conferred upon members of the organization are undeniable, and the loss to business and professional women excluded from its ranks severe. The substantial busi-

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[2] Many targets of these actions have responded to these external pressures and to the urgings of their members by opening their doors to women. In 1986 alone, the University Clubs of Pasadena, California and Providence, Rhode Island, Philadelphia's Union League and the Detroit Athletic Club were among those voting to admit women. *All Male Club of 60 Years Finally Relents*, L.A. Times, June 19, 1986, at 1; *Club in Rhode Island to Let Women Join*, N.Y. Times, June 8, 1986 at 61, col. 1; *Philadelphia Club Drops All-Male Restriction*, N.Y. Times, May 22, 1986, at A.20; *Clubs End Bar to Women*, N.Y. Times, December 31, 1986, at D16, col.2.

ness activities engaged in by Rotary make application of the California Unruh Act a constitutionally valid effort to remove discriminatory barriers to women's full participation in the business, professional, civic and political life of their community.

B. Application Of The Unruh Act To Rotary International Serves The "Profoundly Important" State Interest Of Ensuring Nondiscriminatory Access To Commercial Opportunities.

This case requires the court, as in *Roberts v. United States Jaycees*, 468 U.S. 609, 612 (1984), to "address a conflict between a State's efforts to eliminate gender-based discrimination against its citizens and the constitutional freedom of association asserted by members of a private organization." California seeks to apply the Unruh Civil Rights Act, California Civil Code § 51 ("Unruh Act") to protect the right of women to non-discriminatory access to commercial opportunities. The same objective was deemed to be a "compelling state interest[] of the highest order" in *Jaycees*, 468 U.S. at 624. "Assuring women equal access to such goods, privileges, and advantages clearly furthers compelling state interests." *Id.* at 625-26 (citations omitted). Like Minnesota, California has enacted legislation to further the compelling state interest of assuring women and minorities equal access to the commercial advantages available through membership in "private" clubs and organizations engaged in substantial business activity.

At issue here is California's effort to protect women and minorities from the harm that results from exclusion

from organizations that foster business opportunities for their members.

It has been well documented that exclusive clubs and organizations, like Rotary, afford their members unique opportunities for business contacts and business deals. A study sponsored by the American Jewish Committee revealed that more than half of the corporate executives interviewed believed clubs provided valuable business contacts; over two-thirds reported that such membership adds to one's status in his firm or community. Burns, *supra* note 1, *quoting* R. Powell, *The Social Milieu as a Force of Executive Promotion* 105 (1969). As the New York City Commission on Human Rights concluded after holding extensive hearings on business-oriented private clubs:

> Irrespective of the reasons, major companies, banks, law firms and trade and professional associations routinely use club facilities rather than public accommodations for meetings of all kinds, informal and formal. . . [W]itnesses testified from personal experience that clubs are the preferred setting for scheduled group meetings ranging from the inner circle of a particular firm, to the leaders of an industry, profession or governmental agency, to special events at which prominent persons address a select audience on matters of special or general current interest.

E. Lynton, *Behind Closed Doors: Discrimination by Private Clubs*, A Report Based on City Commission on Human Rights Hearing 15 (1975); *see also Club Membership Practices of Financial Institutions: Hearings Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 96th Cong., 1st Sess. (1979).

In essence, private clubs provide members with an entree to the "Old Boy Network," which provides men

with knowledgeable allies who help them advance in their careers, teach them the cast of characters, and advise them of job openings, and business opportunities. The importance of access to such networks cannot be overestimated. The Detroit Free Press has described the Old Boy Network as "where the power really is . . . the mechanism that gives men a chance to push the right buttons and meet the right people at the right time." O'Brien, *Women Helping Women*, Det. Free Press, Nov. 13, 1978. Promotions and high-level jobs are often based on the personal relationships forged in the closed meetings of private clubs. The Bureau of Labor Statistics reported that almost one-third of all jobs men hold come through personal contacts. Bureau of Labor Statistics, U.S. Dept. of Labor, Job Seeking Methods used by American Workers, Table 3 (1972). Most people believe the percentage is even higher for high-level positions. C. Kleiman, WOMEN'S NETWORKS 2 (1980).

Women need the access to career enhancing networks as much as, or more than, men. Despite the gains that women have made in the job market in the last 20 years, they have not attained the same professional status as their white male colleagues. For example, although women now fill nearly one-third of all management positions, most are in jobs which command little authority and relatively low pay. Hymowitz & Schellhardt, *The Glass Ceiling*, Wall St. J., March 24, 1986, at 1D, col. 1. Only two percent of the top executives surveyed in 1985 were women. *Id.*, col. 2. A recent survey of 1,362 senior executives in positions just under chief executive rank at the nation's largest companies found only 29 women. *Why Women Executives Stop Before The Top*, Newsweek, (December

29, 1986/January 5, 1987), at 72. Moreover, women hold only three to four percent of Fortune 1000 directorships. Ansberry, *Board Games,* Wall St. J., March 24, 1985, at 4D, col. 1.

Aspiration, drive and talent simply are not enough for women seeking to equal the professional accomplishments of their male counterparts. Women need the informal contacts, networking, and professional support that membership in private clubs, such as Rotary International, offer. *See* Bartlette, Poulton-Callahan & Somers, *What's Holding Women Back,* Management Weekly, Nov. 8, 1982; Hollingsworth, *Sex Discrimination in Private Clubs,* 29 Hastings L.J. 417, 421 (1977) ("The exclusion of a segment of the population from such private clubs works to severely limit the economic mobility of that segment"); Bell, *Power Networking,* Black Enterprise 111 (Feb. 1986) ("[T]o to be truly successful, you have to become a part of the internal, often invisible, old boy network, too").

These clubs often argue that they are not commercial establishments. In fact, most men-only clubs, including Rotary, serve to promote business activity of every conceivable kind. For example, the President of the Bar Association of San Francisco recently conceded that important legal business, both commercial and professional, is transacted at private clubs, stating: "The exclusion of women and minorities [from private clubs] operates as an impediment to their full participation in the legal profession." *"Male" Clubs: Bar Leaders are Members,* The Recorder, July 22, 1986.

Membership in a "service" club like Rotary is often a prerequisite for those who want to be successful in the

business and political world, particularly in small communities like Duarte. During the debate over the adoption by the California Judges Association of an ethics rule barring judges from belonging to discriminatory clubs, one judge candidly termed membership in service organizations like Rotary "an electoral necessity"; another judge admitted that he owed his election to belonging to Kiwanis and the Elks Club. Jost, *Judges Make Private Clubs a Public Wrong,* L.A. Daily J., Sept. 22, 1986, at 2, col. 4. In the proceedings below, Jacob Frankel, president of California State College at Bakersfield, testified that Rotary membership was essential for a college president to raise funds; all members of his cabinet were encouraged to join Rotary as part of their jobs. (R.T. 70). [Jt. App. 34].

Besides depriving women and minorities of access to professional development, discriminatory business-related clubs have other negative ramifications as well. They perpetuate the treatment of women and minorities as second-class citizens. As two women law professors testified before the United States Senate:

> The existence of such clubs today is evidence that there are still many who think that minorities are not fit persons with whom to associate. The exclusion of women from private clubs delivers a different but no less offensive message. It, too, is a reminder that the legal, political, and economic role assigned to women throughout most of our history was a quite restricted one.

Barbara Allen Babcock & Herma Hill Kay, Statement Submitted to the United States Senate Committee on the Judiciary, June 23, 1979, at 1-2.

Society also suffers when women and minorities are excluded from the opportunities presented by membership in business-oriented clubs and organizations. This Court has often condemned discrimination based on arcane and stereotypical assumptions about the relative needs and capacities of the sexes or races that bear no relationship to the actual ability of individuals. See *Jaycees*, 468 U.S. at 625; *see also California Federal Savings & Loan Ass'n v. Guerra*, — U.S. —, slip. op. at 8 (1987). Not only does the exclusion of women and minorities from discriminatory clubs demean an enlightened society by its implicit denigration of their worth and abilities, but it also tangibly injures the commercial and non-commercial foundation of our nation by depriving us of their full contribution. *See generally, Jaycees, supra.*

Numerous organizations and entities have recently recognized the negative effect of discriminatory membership policies on women and minorities and have enacted measures designed to prohibit such practices. For example, in 1986, both the Bar Association of San Francisco and the California State Bar Board of Governors adopted resolutions urging law firms and corporate legal departments to refrain from scheduling meetings or reimbursing dues or expenses at such clubs. *California Lawyers Move on All-Male Clubs*, N.Y. Times, Aug. 31, 1986, at 35A, col. 1. The Bar recognized that "continued adherence to those policies and practices imposes an unfair and arbitrary professional disadvantage on those members of the [Bar] Association who are subjected to discrimination . . ." San Francisco Bar Ass'n. Resolution, adopted June 11, 1986. The California Judges Association amended its judicial code of ethics and the Judicial Conference of the United States

amended the commentary to Cannon 2 of its code of Judicial Conduct to declare that it is "inappropriate" for members of the judiciary to belong to discriminatory clubs. Hager, *Judges Vote to Avoid Discriminatory Clubs*, L.A. Times, Sept. 16, 1986, at 1, col. 2.

Further, the American Bar Association, the State Bar of New York, American Jewish Congress, the Council on Foundations and such academic institutions as Columbia University, the University of Minnesota and the University of Southern California prohibit their committees, sections and staffs from holding meetings and other official functions at clubs that discriminate.[3]

Among corporations, ARCO, Michigan Consolidated Gas Company, CBS, IBM, The New York Times and Bank of America no longer pay for their employees to be members of such clubs nor reimburse business expenses incurred there.[4]

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[3] American Bar Association, *The Use of Private Clubs for Association Functions*, adopted October 1978; New York State Bar Association, Resolution adopted January 23, 1981; American Jewish Congress, *Discrimination at Private Clubs, Hotels, etc.*, adopted June 6, 1982; Council on Foundations, *Council Policy on the Use of Private Clubs*, adopted October 19, 1981; Columbia University, *Resolution Concerning University Participation in Clubs with Discriminatory Admissions Policies*, adopted January 23, 1981; Memorandum of President C. Peter McGrath, June 1984, University of Minnesota; USC Transcript, Dec. 2, 1985, at 2.

[4] Memorandum from Lowdrick M. Cook, Chairman and Chief Executive Officer of ARCO to ARCO senior management (May 28, 1986); *2 Utilities Halt Dues for Detroit Men's Club*, N.Y. Times, February 12, 1986 at 10, Col. 5; CBS Policy, Delegations of Authority, Reimbursable Business

(Continued on following page)

Philadelphia has adopted legislation banning the city from awarding contracts to any company that pays for membership or expenses at such clubs and from reimbursing public officials for expenses incurred at such clubs. Philadelphia Code Ch. 17-400 and Sec. 20-307 (1980). New York City has amended its definition of a public accommodation to include any organization that has more than 400 members, regularly serves meals and regularly receives payments from or on behalf of non-members in furtherance of trade or business. New York City Admin. Code Ch. 1 § 8-102(9) (1984). And, Governor Mario Cuomo has issued an Executive Order barring the conduct of official New York State business at such facilities.[5]

These actions were taken after extensive debate on the policies of private clubs and their discriminatory impact. The conclusions of the states and cities which reviewed the matter were unanimous. All these new policies embodied "a recognition . . . of the importance, both to the individual and to society, of removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups, including women." *Jaycees*, 468 U.S. at 626.

(Continued from previous page)

Expenses, Paragraph 16, adopted January 31, 1981; IBM, Position of Non-Support for Organizations or Service Clubs Which Exclude Persons on the Basis of Race, Color, Sex, Religion or Natural Origin, adopted 1980; *Century Club's Timesmen Stuck With the Tab*, N.Y. Post, December 12, 1983, at 6, col.1; Bank of America, Expense Account Guidelines (1980).

[5] Executive Order No. 17, Governor Mario M. Cuomo, May 31, 1983, "Establishing State Policy on Private Institutions Which Discriminate."

C. Application of the Unruh Act To Rotary International Does Not Infringe The First Amendment Rights Of Business-Related Clubs and Organizations.

Application of the Unruh Act to Rotary does not abridge either of the two components of the First Amendment right of association, intimate and expressive, identified in *Jaycees*, 468 U.S. at 618.

1. Enforcement Of The Unruh Act Does Not Abridge Club Members' Freedom Of Intimate Association.

In *Jaycees*, this Court explained that the concept of constitutionally protected "freedom of association" actually incorporates two distinct, albeit sometimes coinciding, components. The first, termed the freedom of intimate association, protects "choices to enter into and maintain certain intimate human relationships" against undue intrusion by the State. 468 U.S. at 617-18. This Court has limited the constitutional protection for intimate associations to "the formation and preservation of certain kinds of highly personal relationships." *Jaycees*, 468 U.S. at 618. *See, e.g., Zablocki v. Redhail*, 434 U.S. 374 (1978) (marriage); *Casey v. Population Services Int'l*, 431 U.S. 678 (1977) (childbirth); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (child rearing and education).

In contrast, this Court has consistently refused to confer special status upon those relationships that are removed from the core concept of the home as the province of constitutionally protected privacy. *See, e.g., Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) (court dismissed associational freedom challenge to ordinance preventing six unrelated individuals from living together). *See also*

Runyon v. McCrary, 427 U.S. 160 (1976) (prohibiting racially discriminatory admissions policies of private school "does not represent governmental intrusion into the privacy of the home or a similarly intimate setting").

Upon analysis of those features identified as typical of relationships entitled to the constitutional protection of intimate association—small size, selectivity and exclusivity —this Court in *Jaycees* had no difficulty concluding that the Jaycees organization was "clearly . . . outside of the category of relationships worthy of this kind of constitutional protection." 468 U.S. at 620. No different result can be reached in this case. Rotary is an organization of enormous size, with an intense concern with growth and publicity, whose members associate with hundreds of thousands of Rotarians worldwide. It allows the participation of non-members in most Rotary events, provides business training and opportunities to its members, and bases its selection system on business attributes. Given these factors, Rotary's members do not have any intimate association to protect.

(a) *Size.* In August 1982, Rotary had 907,750 members making it three times the size of Jaycees. Appellants repeatedly state that the average club membership is only 46. (App. Brief at 7). Yet, this average is even larger than the Jaycees' average chapter. *See Jaycees*, 468 U.S. at 613. Some Rotary Clubs have several hundred members. The Bakersfield, California Rotary Club, for example, has 200 members. (Jt. App. at 34). A club in the Seattle area has over 750 members. *Rotary Club of Seattle-International District v. Rotary International* (W.D. Wash. No. C86-1475M) Hough Decl. ¶¶ 3, 4.

Moreover, Rotary members do not associate only with the members of their own club. Rotary requires members to attend meetings every week wherever they may be. (Rotary Basic Library, Vol. 1 at 67-69). [Jt. App. at 84-85]. Members are thus in association in varying degrees with the more than 900,000 Rotarians worldwide.

Further, Rotary is engaged in the assiduous pursuit of growth. Rotary's Manual of Procedure gives explicit directions to each club to recruit new members and maintain a constant "pattern of growth" (1981 Manual of Procedure at 92-99, 134-46) [Jt. App. at 49-54, 61-67]; the "Public Relations" section of the Manual directs each club to have a public relations committee which is to use every possible method to keep Rotary's name before the public to attract new members. 1981 Manual of Procedure at 166-68. [Jt. App. at 70-73]. Rotary's success in achieving growth is evident; membership stood at 907,750 members in 19,788 clubs when this suit commenced in 1982; today there are 1,021,624 members in 22,470 clubs. *Vital Statistics,* 150 The Rotarian, No. 1, January 1987, at 41. This avid appetite for growth is incompatible with concepts of intimacy and seclusion.

(b) *Selectivity.* Rotary particularly argues that it is distinguishable from Jaycees because Rotary has a "selective" membership policy.

One repeatedly stated criterion for what makes a club private is that members not only be selected, as opposed to admitted wholesale, but that "membership is determined by subjective, not objective criteria." *In Re U.S. Power Squadrons,* 59 N.Y. 2d 401, 452 N.E. 2d 1199,

465 N.Y.S.2d 871, 876 (Ct. App. 1983); *Wright v. Cork Club*, 315 F.Supp. 1143, 1153 (S.D. Tex. 1970).

Contrary to this standard of subjectivity, Rotary's "selectivity" is premised on objective business-related criteria. Rotary's selection process uses a business classification system, selecting members as representatives of their business or profession. (App. Brief at 7). When a new member is proposed, the classification committee first ascertains that the proposed member holds a leadership position in "an open classification of business or profession." (*Id.* at 8). "The membership committee evaluates the candidate from the standpoint of character, *business* and social standing." (App. Brief at 8, emphasis supplied).

Thus, Rotary's selection system is thoroughly tainted by commercialism, which is enough to undermine its claim to a right of intimate association and justify the state's interest in ensuring nondiscriminatory access to the commercial opportunities available in Rotary. Furthermore, requiring Rotary to consider the admission of women on their merits will not deprive the organization of its right to choose members for their business/professional affiliations or for their congeniality. Application of the Unruh Act will only bar the wholesale exclusion of women and minorities on invidious discriminatory grounds. Such grounds are not entitled to constitutional protection.

(c) *Publicity.* Another criterion which has been mentioned in lower court cases in determining whether an organization is "private" is whether its publicity is aimed solely at its own members. See *In Re U.S. Power Squadrons, supra; Wright v. Cork Club, supra.* Rotary's Manual of Procedure reveals a virtual obsession with directing

publicity to the public and keeping Rotary constantly in the public eye. The Manual of Procedure directs clubs' public relations committees "to take a comprehensive approach to public relations" and "to utilize newspapers, radio, television, magazines and firms in telling the Rotary story." 1981 Manual of Procedure at 166-67. [Jt. App. at 70-72].

Rotary's constant attention to publicity is another means by which it confers a business advantage on its members, who are regularly brought into the public eye with both their Rotarian status and business classification identified. Like its appetite for growth, Rotary's appetite for publicity is antithetical to any meaningful concepts of intimacy and seclusion.

(d) *Involvement of Non-Members.* Rotary's claim that its clubs "have well defined policies restricting participation to members" (App. Brief at ii) is belied by its Manual of Procedure. Individual members are urged to make "a special effort" to invite guests to weekly meetings "in order that non-Rotarian members of the community may be better informed about the function of the Rotary Club and its aim and objects." 1981 Manual of Procedure at 35. [Jt. App. at 39]. Like Jaycees, Rotary conducts a wide range of community service projects in which members of the public of both sexes and other organizations participate. *Id.* at 42-47. [Jt. App. at 40-45]. Further, non-Rotarians are invited to speak at business relations conferences (Rotary International No. 540) [Jt. App. at 14-17] and international conventions. 1981 Manual of Procedure at 54. [Jt. App. at 45].

Appellants urge that, unlike Jaycees, Rotary has no women's affiliates, so that to introduce women into Rotary

would be a sharp break with tradition. Yet, the Manual of Procedure specifically commends the "fine work" performed by "ladies committees or other associations composed of women relatives of Rotarians cooperating with and supporting them in service and other Rotary club activities." *Id.* at 47. [Jt. App. at 44-45]. A recent Rotarian article names these groups as the Rotary Anns, Inner Wheel and Las Damas de Rotary. Uhlig, *Do Women Belong in Rotary? No,* 150 The Rotarian at 15 *et seq.* (January 1987). Thus, members of the public, including women, are regular participants in Rotary activities.

(e) *Purpose.* One of the most salient factors in analyzing an organization's ability to claim the protection of freedom of intimate association is its purpose. If the foundation and focus of an association is to any substantial extent commercial or professional, as is Rotary's, then that association does not possess the requisite attributes of intimacy to bring it within the relationships entitled to special constitutional consideration.[6] Although Rotary engages in a variety of community service projects, service to the public is only one of its purposes. Rotary's Basic Library states that Rotary's founder, Paul Harris, "had an idea that friendship and business could be mixed and that doing so would result in more business and more friendship for everyone involved." (Rotary Basic Library, Vol. 3, Vocational Service, at 5). [Jt. App. at 89].

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[6] Appellants persist in citing the trial court opinion to the effect that the business benefits of Rotary membership are "incidental to the [association's] principal purposes," (App. Brief at 29 (quoting from Jt. App. B-3)), even though the Court of Appeal ruled that "finding" was not supported by the evidence and is therefore of no import under California law. *See* Jt. App. C-26.

Concern for members' business success continues to be a prime feature of Rotary activities. Rotary International No. 540, describing Rotary "Business Relations Conferences," states:

> One of the most satisfying vocational service programs for the Rotarian is the business relations conference. The Rotarian learns management techniques that help improve his own business or professional skills. He receives the inspiration of discussing business problems with experts in his own or related fields.

[Jt. App. at 14]. The Manual of Procedure, under "Business Advice and Assistance to Rotarians", urges each club to establish committees to provide confidential business advice for members and to hold "clinics" for members to discuss problems of an economic nature. 1981 Manual of Procedure at 38. [Jt. App. at 40].

The trial court record disclosed that Rotary members often deduct their dues as a business expense or obtain reimbursement from their employers. At least three witnesses testified that either their employers paid their dues (R.T. 20, 32, 69) or that the Internal Revenue Service allowed the deduction during income tax audits. (R.T. 4, 20). A former treasurer of the Bakersfield Rotary Club testified that, out of the club's 200 members, the dues of all but eight or ten were paid by their companies or businesses. (R.T. 70).

Deduction of members' dues and club-related expenses in private clubs is pervasive. One survey found that 58% of the banks and 53% of the savings and loan associations contacted regularly paid membership dues in private organizations for their executives. Burns, *supra*, 18 Harv. C.R.-C.L. L. Rev. at 329, n.22. A recent compre-

hensive survey of executive perquisites showed substantial percentages of each of the seven industry groups studied paying for luncheon and supper club dues for one or more management levels. Executive Compensation Services, Inc., Executive Perquisites Report 1986/87 (1986) at 66-69. In 1980, the National Club Associations estimated that fully half of the approximately 300,000 federal contractors paid or reimbursed certain dues or expenses of their employees at private clubs. Comments of the Nat'l Club Ass'n. Re Regulations Proposed By the Dept. of Labor, Office of Federal Contract Compliance Programs, Dealing With Payments By Federal Contractors to Private Organizations (March 24, 1980). Many law firms reimburse lawyers for dues and, even those that do not, repay client entertainment charges spent at such clubs. *See "Male" Clubs: Bar Leaders are Members*, The Recorder, July 22, 1986. The extent of this practice can best be seen in a letter sent by the former president of New York City's University Club to its membership: "A recent analysis of dues and expense payments showed that nearly 40% of receipts were paid by checks drawn on business accounts: this is only part of the total since many persons pay on their own account and then obtain reimbursement from employers." Letter of J. Wilson Newman (March 30, 1981) Testimony of the New York City Comm'n. on the Status of Women in Support of Intro. 513 Before the General Welfare Comm., (July 30, 1980). The National Club Association reported that 37% of city clubs' and 26% of country clubs' total income came from company paid memberships. *The All-Male Clubs: Threatened on all Sides*, Bus. Wk., August 11, 1980, at 90.

Such practices clearly contradict any argument that clubs like Rotary are purely social organizations since each

deduction constitutes a representation to the government that club actvities are business-related. The federal Internal Revenue Code provides that only "the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business" may be deducted from income taxes. 26 U.S.C. § 162. For the deduction to be allowed for a club-related expense, federal tax regulations further require that a club be used for business purposes at least 50% of the time. Treas. Reg. § 1.274-2(e)(4)(iii) (1982). Treating club-related expenses as a business deduction is thus *prima facie* evidence that membership serves a business purpose or confers a professional advantage.

Thus, the Court of Appeals properly concluded:

> The evidence simply does not support the trial court's finding that the business advantages are merely incidental. By limiting membership in local clubs to business and professional leaders in the community, International has in effect provided a forum which encourages business relations to grow and which enhances the commercial advantages of its members.

Rotary Club of Duarte v. Directors of Rotary International, 178 Cal.App.3d 1035, 1058, 224 Cal.Rptr. 213 (1986).

When the indicia of intimate association—size, selectivity, publicity, seclusion, and purpose—are examined, it is clear that Rotary does not merit the protection of a right of intimate association.

2. Enforcement Of The Unruh Act Does Not Abridge Club Members' Freedom Of Expressive Association.

The second aspect of the constitutional right of association identified in *Jaycees* is the "freedom of expressive

association." 468 U.S. at 622. Rotary International and its individual club members cannot claim immunity from California's anti-discrimination law by relying on this component of freedom of association.

a. Rotary International And Its Members Cannot Claim The Protection Of The Constitutional Right Of Expressive Association.

The right to associate for expressive purposes, while not itself explicitly guaranteed by the Constitution, is a necessary concomitant of an individual's liberty to engage in protected expressive activities. 468 U.S. at 622. As such, the right applies only to those organizations whose purpose for associating is "the advancement of beliefs and ideas." *NAACP v. Alabama,* 357 U.S. 449, 460 (1958). Appellants' theory of freedom of association would uproot the right to expressive association from its First Amendment moorings. Rotary claims constitutional immunity from California's anti-discrimination law for an organization whose primary purposes and activities are commercial rather than expressive. Under the circumstances, acceptance of appellants' claim of free association would trivialize and even denigrate the First Amendment's protection of free expression.

Discriminatory conduct is not entitled to constitutional protection simply because it is practiced by a group, rather than by individuals. Rather, the Court must first determine whether Rotary's activities can appropriately be characterized as protected expression. *See Jaycees,* 468 U.S. at 635-36; *see generally,* L. Tribe, Constitutional Law §§ 12-23, at 702 (1978) (defining the First Amendment freedom of association as "*a right to join with others*

to pursue goals independently protected by the First Amendment—such as political advocacy, litigation (regarded as a form of advocacy), or religious worship'') (footnotes omitted) (emphasis in original).

Groups whose activities are not inherently expressive have received mixed treatment. For example, in *NAACP v. Button,* 371 U.S. 415, 429-30 (1963), the Court struck down a state statute restricting the associational freedom of a law firm engaged in ''political expression'' to achieve social goals. Yet, a law firm engaged in an ordinary commercial practice is afforded no special First Amendment associational protection. *See, e.g., Hishon v. King and Spaulding,* 467 U.S. 69 (1984); *see also Ohralik v. Ohio State Bar Association,* 436 U.S. 447, 459 (1978) (''A lawyer's procurement of remunerative employment is a subject only marginally affected with First Amendment concerns'').

The right of free speech is at the heart of the Court's willingness to extend constitutional protection to an association's internal affairs. Accordingly, Rotary can claim special First Amendment protection under the banner of freedom of association only if it can show that it truly has the purpose of advancing beliefs or ideas. No such showing can be made here. There is no indication in the record, and no suggestion in Appellants' brief, that protected expression is even an ''insubstantial part'' of Rotary's purposes and activities.

Moreover, like the Jaycees, Rotary has chosen to ''enter[]the market place of commerce in a[] substantial degree,'' and, in so doing, it has forfeited ''the complete control over its membership that it would otherwise

enjoy if it confined its affairs to the marketplace of ideas." *Id.* at 636. (O'Connor, J., concurring). As the previous sections demonstrate, Rotary has a commercial purpose and engages in substantial business activity. Accordingly, the Court should not allow Rotary's sweeping invocation of associational freedom to insulate it from coverage under California's anti-discrimination law.

b. Enforcement Of The Unruh Act Would Not Interfere With Any Expressive Purposes Of Activities Of Rotary International And Other Business-Related Clubs.

Even if Rotary and other business-related clubs engaged in activities that invoked the protection of the First Amendment right of expression, Rotary "ha[s] failed to demonstrate that [the Unruh Act] imposes any serious burdens on the male members' freedom of expressive association." *Jaycees,* 468 U.S. at 626. In particular, there is "no basis in the record for concluding that admission of women as full voting members will impede the organization's ability to engage in [] protected activities or to disseminate its preferred views." *Id.* at 627.

There is no conceivable ground for positing that the consideration of women for membership in Rotary would somehow interfere with the organization's stated objective: to "provide humanitarian service, encourage high ethical standards in all vocations and help build goodwill and peace in the world." 1981 Manual of Procedure, at 7. [Jt. App. 35]. Rendering civic services and responding to community needs do not in any way require a single-sex membership. To the contrary, the record established that many Rotary clubs, with the encouragement of Rotary International, seek the close cooperation and support of women in their service and other club-related activities,

even establishing auxiliary women's committees for this very purpose. *Id.* at 47. [Jt. App. 44-45].[7] *Cf. Jaycees*, 468 U.S. at 627. (participation of women in many of Jaycees' activities dispels claim that admission of women will impair organization's symbolic message). In short, as in *Hishon v. King & Spaulding*, 467 U.S. at 78, appellant "has not shown how its ability to fulfill such a function would be inhibited by a requirement that it consider [a women] for [membership] on her merits."[8]

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[7] This is typical of most of the so-called "private" business clubs and service organizations throughout the country. Women are often allowed (and sometimes encouraged) to participate in the club's activities as wives, guests or affiliates, while being denied the commercial opportunities and advantages that first-class membership would provide.

[8] Rotary International and other clubs cannot shield themselves from application of the Unruh Act by claiming that a belief in its male-only membership policy is one of the fundamental tenets of the organization, and hence is itself protected expression. This essentially is the contention raised by *amicus* Conference of Private Organizations, which asserts, however implausibly, that the male-only policy is the *sine qua non* of membership for many Rotarians. (See Brief of the Amicus Curiae in Support of Appellants by the Conference of Private Organizations, at 12-15.) Not only is such an argument unsupported by the record, but it confuses the right to *promote* a particular belief—which is generally protected under the First Amendment—with the right to *practice* that same belief—which does not always enjoy constitutional protection. This distinction was the basis for this Court's holding in *Runyon vs. McCrary, supra*, that radically discriminatory admission practices of private nonsectarian schools were unlawful under 42 U.S.C. § 1981.

It is conceivable, perhaps, that for some types of organizations, such as the Ku Klux Klan, the expressive content of its discriminatory membership criteria is so intimately tied to the very purposes, beliefs, and pronouncements of the organization, that government regulation of its membership criteria would constitute an infringement on its freedom of expression. But that is certainly not the situation here.

Indeed, Rotary International does not really contend that requiring local clubs to consider women for membership would interfere with the achievement of any of the organization's commendable service objectives. Rather, it asserts only that admitting women to membership in local California clubs, as the Duarte chapter desires to do, "would comprise a material interference with deeply felt choices of association preference of many Rotarians." (App. Brief at 34.)[9] Yet, this Court has time and again rejected any notion that the First Amendment right of expressive association protects the social preferences of an organization's members, at least when those preferences demand the exclusion of an entire category of individuals based solely on their race or sex. *Norwood v. Harrison*,

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[9] Rotary also contends that requiring it to permit local clubs to admit women "would risk a material and harmful disruption of the cooperative integrity of Rotary" due to its dependence on "a delicate balance of divergent attitudes in diverse cultures." (App. Brief, at 34.) Aside from the fact that the Court of Appeals concluded as a matter of state law that the evidence did not support a finding that the admission of women into the Duarte chapter "would cause the downfall of the District or International or seriously interfere with Rotary's objectives" (Jt. App. C-26), the desire to appease the "divergent attitudes in diverse cultures" cannot justify unlawful acts of discrimination. When Rotary International conducts its operations in the United States and the State of California, it subjects itself to the laws of those "cultures." The "attitude" of the law in this country is that women are not to be denied equal access access to commerical opportunities and advantages. *See generally Fernandez* v. *Wynn Oil Co.*, 653 F.2d 1273, 1277 (9th Cir. 1981) ("Though the United States cannot impose standards of non-discriminatory conduct on other nations through its legal system, [a rule permitting foreign customer preferences to qualify as a BFOQ under Title VII] would allow other nations to dictate discrimination in this country."); *Abrams* v. *Baylor College of Medicine*, 581 F.Supp. 1570 (S.D. Tex. 1984).

413 U.S. 455 (1973), *accord*, *Runyon v. McCrary*, 427 U.S. 160, 175-76 (1976).

In sum, application of the Unruh Act to Rotary works no infringement on the organization's or its members' freedom of expressive association. Like the Minnesota law at issue in *Roberts*, the Unruh Act "Requires no change in the [Rotary's] creed . . . , and it imposes no restrictions on the organization's ability to exclude individuals with ideologies or philosophies different from those of its existing members." *Jaycees*, 468 U.S. at 627. Accordingly, there is no First Amendment violation in this case.

c. Any Intrusion On Rotary's Or Its Members' Freedom Of Expressive Association Is Outweighed By The Compelling State Interest In Ensuring Non-Discriminatory Access To Commercial Opportunities In Our Society.

This Court has often admonished that, however valued the right to associate for expressive purposes may be, it is not absolute. Rather, "[i]nfringements on that right may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Jaycees*, 468 U.S. at 623. (citations omitted). As discussed in Part IVB, *supra*, the Unruh Act—and its application to Rotary International in this case—"plainly serves compelling state interests of the highest order." *Id.* Here, as in *Jaycees*, to the extent that application of the Unruh Act creates any burden on Appellants' right to associate, that impact is no greater

than is necessary to achieve the state's goal of eradicating discrimination. *Id.* at 624.[10]

As discussed above, the law makes no attempt to interfere with, and has no impact upon, the purposes and activities of the Rotary organization. It demands only that women be given the same opportunity as men to join Rotary, that blacks be given the same opportunity as whites to benefit from the commercial services and advantages that membership in Rotary provides. The law seeks only to remove an artificial barrier to membership that bears no relationship to any legitimate functions or objectives of the organization. As such, the Unruh Act "'responds precisely to the substantive problem which legitimately concerns' the State and abridges no more speech or associational freedom than is necessary to accomplish that purpose." *Jaycees,* 468 U.S. at 629 (quoting *City Council v. Taxpayers for Vincent,* 466 U.S. 789, 810 (1984)).

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[10] Rotary International contends that the state's interest in eliminating discrimination is not sufficiently compelling because Rotary is not engaged in the distribution of "publicly available goods, services and other advantages." *See* App. Brief at 26-36. Rotary's attempt to distinguish this case from that in *Jaycees* by contrasting its allegedly selective availability of advantages with *Jaycees'* references to *publicly* available goods and services is misplaced. This Court's use of that phrase was occasioned by the language and breadth of Minnesota's Human Rights Act, which makes specific reference to "publicly available" goods, services, etc. in defining the scope of its coverage. *See* Minn. Stat. § 363.03, subd. 3 (1982) (quoted at 468 U.S. at 615).

V.

CONCLUSION

California's compelling interest in eliminating discrimination in the availability of commercial opportunities outweighs any freedom of intimate or expressive association held by Rotary, especially given the substantial business activities engaged in by Rotary and the substantial commercial advantages available to its members. Amici therefore submit that this Court should affirm the decision below.

Respectfully submitted,

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APPENDIX

AMICI'S STATEMENT OF INTEREST

American Jewish Committee ("AJC") is a national organization of approximately 50,000 members which was founded in 1906 for the purpose of protecting the civil and religious rights of Jews. AJC believes this goal can best be accomplished by helping to preserve and promote the constitutional rights of all Americans. Specifically, AJC supports equal rights under the law for women and is committed to the elimination of gender-based discrimination. AJC appeared before this Court as *amicus curiae* in *Roberts v. U.S. Jaycees, supra.*

American Women in Radio and Television, Inc. (AWRT) is a not-for-profit, national organization of women and men who work as professionals in radio, television, cable, advertising, public relations and closely related fields. With nearly 3,000 members in more than 50 chapters coast to coast, AWRT, established in 1951, is the oldest continuing professional broadcast organization in the nation. Its membership is representative of the wide spectrum of professionals in the electronic media and allied fields and includes station and company owners and managers, writers, producers, directors, account executives, media buyers, lawyers, engineers, on-air talent, editors, researchers, analysts, reporters, artists, and other qualified professionals. The objectives of AWRT, as stated in its Bylaws, are: to work *worldwide* to improve the quality of the electronic media; to promote the entry, development and advancement of women in the electronic media and their allied fields; to serve as a medium of communication and idea exchange; and to become involved in community concerns. AWRT is committed to advancing

the professional development of women in the industry and to providing opportunities for networking among leaders in the industry. AWRT's membership is restricted, as is Rotary's, to business leaders and professionals. However, male members of AWRT are eligible for membership in Rotary International; but AWRT's female members are ineligible solely because they are women. AWRT's female members are denied the commercial and networking opportunities that are available to its male members in Rotary International solely because of their gender.

California Women Lawyers ("CWL") is a statewide bar association representing the interests of the approximately 15,000 women lawyers in the State of California. It has both individual members and 24 local affiliates throughout the state. *Women Lawyers' Association of Los Angeles* ("WLALA") is a county-wide bar association affiliated with CWL. The membership of CWL and WLALA includes both male and female lawyers, judges and law students, all of whom are concerned with the legal rights and equal treatment of women. The ability of women to compete effectively in the marketplace has been and is being hindered by their exclusion from discriminatory private clubs and organizations that foster the business goals of their all male, mostly all-white, membership. For this reason CWL took an active role in urging the California State Bar and the California Judicial Council to adopt a resolution and an amendment to the code of ethics, respectively, discouraging participation in private clubs which discriminate on the basis of sex, race or religion.

Center For Constitutional Rights ("CCR") was born of the civil rights movement in the South. CCR attorneys

have been active in many of the struggles for equality waged by different groups in our society. CCR attorneys have been involved in cases dealing with employment discrimination, reproductive rights, voting rights and fair housing. Through litigation and public education, CCR has worked to protect and make meaningful the constitutional and statutory rights of women, Blacks, Puerto Ricans, Native Americans and Chicanos. CCR appeared before this Court as *amicus curiae* in *Roberts v. U.S. Jaycees, supra.*

Coalition of Labor Union Women ("CLUW") is a membership organization of labor union women who are interested in improving working conditions and eradicating sex discrimination in all aspects of employment and employment related advancement. CLUW believes that organized and unorganized women are entitled to full participation in all facets of business and civic life. CLUW appeared before this Court as *amicus curiae* in *Roberts v. U.S. Jaycees, supra.*

Connecticut Womens Educational and Legal Fund ("CWEALF") is a non-profit public interest law firm specializing in cases of sex discrimination. Since its inception in 1975, CWEALF has represented women in numerous cases, including women seeking equal access to organizations with discriminatory membership policies. CWEALF has also been active in educating women about their legal rights. CWEALF appeared before this Court as *amicus curiae* in *Roberts v. U.S. Jaycees, supra.*

Equal Rights Advocates ("ERA") is a San Francisco-based public interest legal and educational corporation specializing in the area of sex discrimination. Since its inception over twelve years ago, ERA has litigated cases

aimed at the promotion of equality of the sexes under law. ERA has worked to ensure the equal employment opportunity rights of women and the enforcement of state and federal legislation enacted to guarantee women freedom from discrimination. ERA appeared before this Court as *amicus curiae* in *Roberts v. U.S. Jaycees, supra.*

National Organization For Women ("NOW") is a national membership organization of 150,000 women and men in over 750 chapters throughout the country dedicated to assuring equal economic, social and political opportunity for all women. Since its founding in 1967, NOW has been the largest feminist membership organization dedicated to combatting sex discrimination and removing barriers to women's full participation in all aspects of American society. NOW participated as *amicus curiae* before this court in *Roberts v. United States Jaycees, supra.* NOW recognizes the importance of equal access for women to organizations like Rotary International which provide business advice and assistance and entry into a network of influential business and community leaders.

The *NOW Legal Defense and Education Fund* ("NOW LDEF") is a not-for-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and secure equal rights. NOW LDEF was founded in 1970 by leaders of the National Organization for Women, a membership organization of over 150,000 women and men in more than 750 chapters throughout the country.

Because the exclusion of women from clubs and organizations which significantly impact the business and civic life of the community affects far more women than is gen-

erally supposed, this is an issue with which NOW LDEF has been involved for many years. NOW LDEF worked closely with the Minnesota Attorney General over a five year period and filed several *amicus* briefs in the case successfully challenging the sex discriminatory policies of the Jaycees, *Roberts v. United States Jaycees*, 468 U.S. 609 (1984). NOW LDEF also represented NOW-NYS when it participated as *amicus* before the New York Court of Appeals in *In re U.S. Power Squadrons*, 59 N.Y.2d 401 (Ct.App. 1983) and is currently before the New York Court of Appeals as *amicus* in *New York State Club Association v. City of New York*, — A.D.2d — (1st Dept. July 31, 1986), both cases dealing with clubs and organizations that discriminate against women.

Northwest Women's Law Center ("Law Center") is a non-profit, membership-supported organization based in Seattle, Washington, that seeks to promote the rights of women through law. The Law Center conducts educational and informational referral programs to advise women in the Pacific Northwest of their legal rights. It also sponsors litigation working towards the total elimination of sex discrimination, including the eradication of employment discrimination and of social and legal barriers that deny women full participation in the business and professional world. The Law Center appeared before this court as *amicus curiae* in *Roberts v. U.S. Jaycees, supra*, and is currently appearing as *amicus curiae* before the United States District Court for the Western District of Washington in a case highly similar to the case at bar, *Rotary Club of Seattle-International District v. Rotary International*, (W.D. Wash., No. C 86-1475M) (1986).

The *San Francisco Women Lawyers Alliance* is a bar association primarily comprised of women lawyers practicing in the San Francisco Bay Area. The Alliance was formed in great part to advocate on behalf of women in the community. The organization has filed a number of amicus briefs and lobbied for state and local legislation affecting economic and employment opportunities for women. This past year, the Alliance assumed a leadership role in persuading both the Bar Association of San Francisco and the California State Bar Board of Governors to adopt resolutions denouncing the discriminatory membership policies of private clubs.

Women's Action Alliance, Inc., a national non-profit organization, works towards full equality for women by developing educational programs and services that assist women and women's organizations. The issues at stake in this case are critical to that equality which is denied whenever women are barred from full participation in institutions crucial to their development. Women's Action Alliance appeared before this Court as *amicus curiae* in *Roberts v. U.S. Jaycees, supra.*

The *Women's Bar Association of the State of New York* ("WBASNY") is a statewide membership organization of more than 2,500 female and male lawyers, law graduates, and law students committed to the goal of advancing the status of women under the law, in the workplace, and in all fields of human endeavor. In support of this goal, WBASNY has participated in cases which seek to secure women's rights under the law and to remove the barriers which prevent women from achieving their full potential in society. Among the barriers which WBASNY seeks to eliminate is women's exclusion from

clubs and organizations important to the business and civic life of the community. In support of that goal, WBASNY participated before this Court as an *amicus* in *Roberts v. U.S. Jaycees, supra,* and has appeared before the New York Court of Appeals as an *amicus* in *In re United States Power Squadrons v. State Human Rights Appeal Board, supra,* and *New York State Club Association v. City of New York, supra,* both cases dealing with clubs and organizations that discriminate against women.

Women Employed is a Chicago-based organization with a membership of 3,000 women workers. Over the past nine years, the organization has assisted working women with problems of sex discrimination. Women Employed also monitors the enforcement, actions and policies of the EEOC and Office of Federal Contract Compliance Programs with regard to a broad range of sex discrimination issues. Women Employed appeared before this Court as *amicus curiae* in *Roberts v. U.S. Jaycees, supra.*

Women's Equity Action League ("WEAL") is a national non-profit membership organization specializing in economic issues affecting women, and sponsors research, education projects, litigation and legislative advocacy. WEAL is committed to the full and effective enforcement of anti-discrimination laws at both the federal and state levels, to assure that all economic opportunities are available to women as well as men. Women's Equity Action League appeared before this Court as *amicus curiae* in *Roberts v. U.S. Jaycees, supra.*

Women in Business ("WIB") was created originally to provide a network through which successful women would have the opportunity to encourage, enlighten, and

support one another's professional endeavors A small group of successful women began to meet to share power concepts, mutual concerns, and successes and to examine the need for affiliation and collaboration with their peers in the business world. WIB was officially incorporated in March 1976. Today the membership of WIB is comprised of more than 250 prominent, influential Los Angeles women in the corporate and business worlds, with representation from academia, politics, government, the arts, sports and science.

Women's Law Project ("WLP") is a non-profit feminist law firm dedicated to eliminating sex discrimination through litigation and public education. Since its founding in 1973, WLP has been concerned with institutional barriers to the advancement of women at all levels of participation in society. WLP has represented women seeking admission to all male educational institutions and community organizations, and strongly believes that participation in such organizations is fundamental to the ability of women to compete equally in business and community life. Women's Law Project appeared before this Court as *amicus curiae* in *Roberts v. U.S. Jaycees, supra.*

Women's Legal Defense Fund ("WLDF") is a non-profit, tax-exempt membership organization, founded in 1971 to provide pro bono legal assistance to women who have been discriminated against on the basis of sex. The Fund devotes a major portion of its resources to combatting sex discrimination in employment, through litigation of significant employment discrimination cases, opera-

tion of an employment discrimination counselling program, and public education. WLDF's experience and knowledge —gained from its members who, as professionals, are disadvantaged by discriminatory membership policies and from its clients who are similarly disadvantaged by exclusion from community and business organizations—have demonstrated that such exclusionary policies result in a diminution of employment opportunities. Women's Legal Defense Fund appeared before this Court as *amicus curiae* in *Roberts v. U.S. Jaycees, supra.*